

IN THE MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel.)	
FORD MOTOR COMPANY,)	
)	
Relator,)	
)	
v.)	SC86365
)	
THE HONORABLE W. STEPHEN NIXON,)	
Judge of the Circuit Court of Jackson County,)		
Missouri, Division 5,)	
)	
Respondent.)	

RESPONDENT'S BRIEF
IN OPPOSITION TO
PETITION FOR WRIT OF PROHIBITION

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- KK. PLAINTIFFS' THIRD MOTION TO ENFORCE AS TO FORD MOTOR COMPANY, filed on December 30, 2003**
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- MM. Relator Ford Motor Company's Response to Plaintiffs' First Set of Interrogatories and Request for Production of Documents dated January 2000 in William R. Taylor, et al. v. Abex Corporation, et al., Court of Common Pleas, Cuyahoga County, Ohio**
- NN. Photograph of ten boxes of documents produced by Relator on September 27, 2004**
- OO. An April 15, 1980 Inter Office Memo, entitled: "Identification of Production Materials and Components Containing Asbestos," contains a nine page list of asbestos-containing products used in Ford vehicles such as gaskets, seal assemblies, switch assemblies, hub assembly, air brake compressor, muffler assembly, cigar lighter and engine assemblies.**
- PP. Ford Motor Company's Answers to Plaintiffs' First Special Set of Interrogatories to Defendants Ford Motor Company, DaimlerChrysler Corporation and General Motors Corporation served in the matter Johnson v. DaimlerChrysler Corp., et al., Case No. 04CV219314, Circuit Court of Jackson County, Missouri.**
- QQ. Affidavit of George Sarkisian, dated February 10, 2005**

- RR. Plaintiffs' Brief in Support of Motion for Contempt to Compel Compliance With Subpoena, Roy L. Dietiker, et al. V. United States Gypsum Company, et al., filed January 17, 2001**
- SS. Plaintiff's Preliminary Rule 26 Disclosure, Roy L. Dietiker, et al. V. United States Gypsum Company, et al., filed May 31, 2001**
- TT. Sixteenth Judicial Circuit of Jackson County Local Rule 32.2.3
Objections to Interrogatories**

PRELIMINARY STATEMENT

Relator's brief, while long on words and pages, is short on substance. Respondent, who was very familiar with the claims pending before him and after reviewing the briefs and hearing argument, ordered Relator to answer specific interrogatories, to produce documents described in specific requests and to produce representatives to testify on specific topics. Save for one interrogatory and one request for production, Relator has failed in this Petition to specify which interrogatories, which requests for production and which deposition topics are even subject to this writ proceeding. Instead, Relator makes broad, general swipes at the discovery preventing Respondent from making specific arguments and this Court from making a specific ruling.

Relator contends that Respondent entered discovery orders "without subject matter jurisdiction and without any consideration of relevant scope or burden." Relator's arguments on these issues were rejected by Respondent and by the Court of Appeals for the Western District, Case No. WD 64602 (Oct. 12, 2004). Instead of citing the specific discovery requests which it deems objectionable, Relator cites specific requests made in other proceedings, as though they have some direct correlation to the issue now before the Court. They do not. Relator argues that discovery is only limited to a separate workers compensation claim but fails to explain which specific interrogatories, requests for production or deposition topics are only so related.

As concerns the two cited discovery requests, Relator claims a burden to make a full response but does not explain why it failed to file a motion for protective order to limit the

discovery. Relator's argument allows it to refuse to disclose the information that it readily possesses and avoid its obligation to participate in discovery in good faith.

In presenting this matter, Relator mischaracterizes the claims in this case, misstates underlying facts, misconstrues the objectives behind the discovery ordered and exaggerates the supposed burden of that discovery. A Petition for Writ is supposed to seek specific relief yet Relator, more often than not, relies on vague generalities rather than specifics. Relator's Petition should be denied on that basis alone.

In this case, the heirs of Roy Dietiker have brought wrongful death product liability claims against Relator, Defendant Ford Motor Company ("Ford"), in Ford's capacity as a manufacturer of automotive brakes used by decedent in a non-employment capacity and wrongful death product liability and non-product liability claims against John Doe Defendants 1-20, many of whom may have manufactured products used at the decedent's place of employment, which coincidentally was at Defendant Ford's Claycomo, Missouri plant. All of these claims are currently at issue.

With regard to the at-issue discovery, Relator wears two hats, one as a defendant and another as a witness in possession of discoverable evidence admissible against other parties. Certain discovery is intended to investigate the claims against Relator and Relator's defenses. Relator is a primary source, if not the only source, of information that can evidence claims against others, in this case: designers, manufacturers, distributors, users or disturbers of asbestos products, the John Doe defendants. Relator seeks to avoid discovery in its capacity as a defendant by asserting that the Court lacks jurisdiction and/or that the discovery is overly

broad. Relator seeks to avoid discovery in its capacity as a witness by misconstruing the discovery as concerning only a separate workers' compensation claim only. Both positions are without merit.

Plaintiffs requested discovery from Relator to assist them in their product liability claims against Relator and John Doe Defendants 1-20. With respect to their claims against Relator, Plaintiffs served Relator with certain specific discovery concerning: (1) Relator's manufacture of asbestos products; (2) Relator's knowledge of the hazards of asbestos; (3) actions taken by Relator to protect its customers and others from asbestos hazards; (4) research into the hazards of asbestos; (5) warnings of those hazards; (6) Relator's affirmative defenses; and (7) related issues.

Plaintiffs also served discovery upon Relator concerning the existence of asbestos at the Ford Claycomo assembly plant where decedent worked for over 30 years. This discovery is necessary to: (1) obtain basic medical records concerning the decedent generated by Relator's corporate medical department; (2) locate documents which may identify potential additional defendants, such as manufacturers and distributors of asbestos and contractors and others who caused decedent to become exposed to asbestos who may be substituted for the John Doe Defendants; (3) identify witnesses who may testify to such exposures; (4) obtain evidence that establishes that the type of product at issue, and the type of asbestos used in that product, and whether it was considered hazardous by Relator (Relator denies this fact in this action); (5) obtain evidence that Relator could have provided a direct warning to decedent concerning the hazards of asbestos in the products at issue; (6) disprove Relator's affirmative

defenses and (7) to support a punitive damages claim.

Relator objected to the discovery and its objections were fully briefed and argued. After reading the briefs and hearing the argument, Respondent issued Orders compelling the discovery that Relator seeks to prohibit. See Relator's Exhibit B-1, B-2 and B-3. Relator first sought prohibition from the Court of Appeals for the Western District. Three days **after** filing its Petition for Writ, Relator provided extensive supplementation of discovery, including the production of ten (10) banker boxes of documents and supplemental answers to interrogatories. Exh. NN. Immediately thereafter Plaintiffs contacted Relator to see if Relator was still pursuing a Writ of Prohibition with the Court of Appeals and, if so, on what issues. Relator did not adequately address the questions. Soon after the production, the Court of Appeals denied the writ. Exh. A. To date, Relator has never addressed the above questions.

Relator's position that discovery requests are overly broad is not consistent with its actions in this case or with its answers to discovery in other asbestos cases: interrogatories which it claims to be burdensome here were answered in other cases. Why are they now burdensome? Relator objects to producing "work related evidence" yet the 10 newly-produced boxes contained many such documents.

Relator objects to the Jackson County Uniform Asbestos Interrogatories and Requests for Production of Documents with no specific explanation, save those concerning workers' compensation claims or the general objection of burden. This same set of discovery has twice been sustained by the Court of Appeals. It has also been sustained once by this Court on a petition filed by one of the same firms now representing this Relator. Each court denied the

writs after a full briefing and argument, with this Court doing so *en banc*.

Relator argues that the discovery is overly broad even though Relator has answered virtually the same discovery in other jurisdictions. Relator claims that it is too burdensome to investigate what products it manufactured or sold with asbestos. But, Relator does not inform this Court that it undertook such an investigation over 20 years ago and identified many products which Relator chose not to include in its interrogatory answers in this case. Relator does not even fully identify each asbestos product in the six cars purchased by Plaintiffs' decedent.

Relator also claims that searching for asbestos-related workers' compensation claims must be performed by hand at a cost of \$2.7 million dollars. However, it is clear that Relator itself has intentionally made discoverable evidence too burdensome to produce. Relator created a computer program to record its workers' compensation claims at a time when it was a named defendant in many asbestos injury and death cases. It disclosed this computer program in discovery responses in other asbestos cases in 1988. Yet today, 17 years later, Relator claims that it is too burdensome to produce the same information. This is an admission that for these past 17 years, Relator has purposefully computerized its workers' compensation claims in a way that prevents their disclosure to injured plaintiffs in other litigation. Relator should not be rewarded for intentionally creating its disorganization.

Relator deceives the court by silence. Relator actually maintains a list identifying its employees that have suffered "Mesothelioma Deaths," the same asbestos-related cause of death suffered by decedent Roy L. Dietiker. Relator refuses to produce the information that

led to this death list despite its obvious relevance on issues of hazard (Is the asbestos fiber in the brakes hazardous?), knowledge (When did Relator become aware of the hazards of asbestos?), warning (How did Relator act when it learned that its employees were dying of mesothelioma when exposed to the same fiber contained in the brakes?) and punitive damages.

General objections are disfavored. Similarly, a general Petition for Writ of Prohibition should be disfavored. These writ proceedings have caused serious delay in this case.

For all of the foregoing reasons, and the reasons set forth herein, Relator's Petition for a Writ of Prohibition must be denied.

STATEMENT OF FACTS

Respondent respectfully suggests that in considering this Petition for Writ of Prohibition, the Court should be aware of the facts and claims in this case as well as the specific discovery which Relator was ordered to produce. As such, Respondent offers the following statement of facts.

1. Decedent Roy L. Dietiker died of mesothelioma, an asbestos-related cancer of the lining of the lung that is caused by exposure to asbestos. Exh. B, Reports of Samuel Hammar, M.D.

2. Relator has produced what it claims is decedent's personnel file. The file contains medical records of x-rays taken of the decedent at various times in his career with Ford. Exh. C.

3. Relator has not produced the actual x-rays for analysis by Plaintiffs' medical experts. Exh. D, Affidavit of Steven E. Crick.

4. Plaintiffs are the widow of the decedent, Priscilla Dietiker, and his three surviving sons. Plaintiffs brought this action in July 2003 against various defendants under the Missouri Wrongful Death Act, §537.080 R.S.Mo. Relator's Exhibit F. Plaintiffs alleged, among other things, that:

3. Defendant Ford is a sophisticated manufacturer of automobiles and trucks and parts for such vehicles. Ford employees at the Claycomo plant, including decedent, worked to assemble and prepare vehicles for sale by Ford. The Claycomo plant was constructed with and

for many years contained numerous asbestos-containing products such as pipe, boiler, elbow and tank insulation. During relevant times hereto, many product vehicles manufactured and assembled at the Claycomo plant contained asbestos.

4. Defendant Ford was a designer, manufacturer, user, installer, and supplier of asbestos-containing products including brakes, clutches, cars and trucks.

* * *

6. Other defendants' names and addresses presently are unknown to plaintiffs, but may be identified at a later date. These John Doe Defendants, or their predecessors in interest, at all times relevant hereto engaged in the design, manufacture, production, sale, distribution, installation, use or disturbance of asbestos, asbestos-containing products and/or were supervisors, superiors or co-workers of decedent at Ford Motor Company. When their names and addresses are discovered, plaintiffs will amend this Petition to specifically name these persons and/or entities as Defendants.

* * *

9. Exposure to airborne asbestos fibers has been associated with bronchogenic carcinoma (a malignancy of the interior of the lung), mesothelioma (a diffuse malignancy of the lining of the chest cavity or

abdomen), and cancer of the stomach, colon and rectum.

10. Asbestos is not subject to degradation and persists in a toxic state once inhaled in the human body.

11. Asbestos is released in the normal course of installation of asbestos products and continues to be released during routine use, maintenance and/or removal of such products and/or of the appurtenances onto which the products have been applied. The fibers, once released, settle very slowly and can be easily recycled into the air, offering repeated possibilities for additional exposure, thus causing a severe and persistent health hazard to those using asbestos products or working in the vicinity of the same.

12. Upon information and belief, Ford became aware of the hazards of asbestos by the 1950's and Ford's knowledge of those hazards accumulated, or should have accumulated, thereafter.

* * *

29. Upon information and belief, defendants knew or should have known of the hazardous nature of asbestos at the Claycomo plant and/or in Ford products long before Decedent was exposed to such asbestos. Upon information and belief, defendants had, or should have had, knowledge of studies that demonstrated a positive link between asbestos and pulmonary diseases in the 1940s, 1950s, 1960s and 1970s.

Defendants' knowledge about the hazards of asbestos exposure accumulated, or should have accumulated, yet defendants failed to warn decedent concerning those hazards.

* * *

33. As a direct result of the acts, errors and/or omissions of defendants, Decedent Roy L. Dietiker developed mesothelioma and died.

34. Individually, and as representative for persons identified under §537.080.1(1) R.S. Mo., plaintiffs make these separate claims in this Petition for Damages for the wrongful death of Roy L. Dietiker, plaintiffs' husband or father, who on or about the 7th day of October 2001, died as a direct and proximate result of his exposure to airborne asbestos from asbestos-containing building and/or other products controlled, supplied and/or used by defendants.

Relator's Exhibit F.

5. Relator served its Answer to the Petition. It specifically denied the allegations in paragraphs 9, 10, 11, 12, 29 and 33. Exhibit E at pp. 15, 18, 19. Relator further raised the following affirmative defenses:

53. If Roy L. Dietiker and/or plaintiffs sustained any injury or damage, which is denied, then such injury or damage was proximately caused or contributed to by exposure to and inhalation of noxious and

deleterious fumes and residues from industrial products, by-products and substances other than those manufactured or sold by Ford, if any, and by cumulative exposure to all types of environmental and industrial pollutants or air and water.

54. If it is proven at the time of trial that Ford might be held accountable for any asbestos-containing products, the products were made so that the asbestos fibers were encapsulated in other material which would prevent the release of injury-producing levels of fibers upon the use of said products.

55. If it is proven at the time of trial that Ford might be held accountable for any asbestos-containing products, Roy L. Dietiker's exposure to asbestos, if any, was of a de minimis nature and could not within a degree of reasonable medical certainty be the legal and proximate cause of his injuries.

* * *

57. If it is proven at the time of trial that any asbestos-containing products for which Ford might be held accountable were manufactured, furnished and supplied as alleged in plaintiffs' Petition, and if said products were used in the fashion alleged, all of which on information and belief is denied, then any such product was so manufactured, furnished, supplied and/or sold in strict conformity with the prevailing

standard of medical art and prevailing standards of the industry.

59. At all times material to plaintiffs' claims, the state of medical and scientific knowledge did not provide Ford with either knowledge or reason to know of a foreseeable risk of harm to Roy L. Dietiker.

60. There should be no recovery against Ford because of any failure to warn or inadequacy of warning because, upon information and belief, at all times pertinent to plaintiffs' claims, Roy L. Dietiker possessed or should have possessed good and adequate knowledge which negated any need for said warning.

Exh. E at pp. 22-24.

6. Relator designed, manufactured and/or distributed asbestos-containing brakes for its automobiles. Exh. F, Relator Ford Motor Company's Supplemental Responses to Plaintiffs' First Uniform Interrogatories to All Defendants at pp. 3-6 served September 27, 2004.

7. Plaintiffs allege that decedent was exposed to asbestos when working on brakes designed, manufactured and/or distributed by Relator and while changing the same on his personal Ford vehicles. In their first supplemental answer to interrogatories, Plaintiffs identified the specific brakes used by Roy Dietiker as follows:

Roy Dietiker was exposed to asbestos from Ford automobiles including original and replacement parts. Roy Dietiker and Plaintiff Priscilla Dietiker owned several Ford vehicles including the following:

1959 English Ford Prefect;
1963 Ford Fairlane wagon;
1968 Ford Cortina;
1973 Ford Torino wagon;
1979 Ford Fairmont wagon;
1982 Ford F150 truck;
1988 Mustang convertible; and
1993 Ford F150 truck.

Roy Dietiker was very handy and did everything on the cars until the 1993 F150 truck. He changed out the brakes on all of the cars, except the convertible. Since Mr. Dietiker was a Ford employee, he received a 10% discount on Ford products so he would buy replacement Ford parts from a local Ford dealership, typically the Ford dealership now known as Metro Ford, 2860 Noland Road, Independence, MO (went under another name before Metro Ford).

Exh. G at pp. 57-58.

8. Relator's brakes were manufactured with chrysotile asbestos. Exh. F, Relator Ford Motor Company's Supplemental Responses to Plaintiffs' First Uniform Interrogatories to All Defendants at p. 6, paragraph 5(h) served September 27, 2004.

9. Relator provided the following sworn answer in answer to an interrogatory:

Are you aware of any diseases and/or injuries which can be caused or contributed to by asbestos fibers? If so, please identify each such disease and/or

injury.

ANSWER: (Objection omitted) Ford denies that there exists today any medical or scientific knowledge that establishes a causal relationship between exposure to the asbestos-containing friction products contained in some of its vehicles and asbestos-related disease or illness.

Id. at ¶ 18 served September 27, 2004.

10. Notwithstanding the foregoing answer, Relator has had a company policy since at least 1975 concerning the hazards of chrysotile asbestos. Exh. H, Industrial Relations Bulletin, July 18, 1975.

11. In its 1983 Industrial Hygiene Bulletin concerning Asbestos, Relator-Ford stated:

Asbestos exposure can cause asbestosis, cancer of the lungs and digestive tract, and mesothelioma.

Asbestos exposures within Ford Motor Company may occur from:

- * Insulated pipe covering for parts washers and cleaners, steam and hot water lines;
- * Insulated coverings for boilers and associated parts in powerhouses. Drying oven and furnace insulation. Asbestos blocks, bricks, sheets, and sleeves.
- * Clutch and brake linings for various machinery and transportation equipment (power presses, conveyor belts, hi-los,

locomotives, tow tractors, trucks, automobiles).

- * High temperature gasket materials for manifold pipes.
- * High temperature blankets, gloves.
- * Asbestos-containing parting compounds, certain talcs. Filtration media.

Exh. I, Industrial Relations Bulletin, August 22, 1983 at pp. 67 and 68 (emphasis added).

12. Plaintiffs' Petition for Damages stated wrongful death claims against Ford and the John Doe Defendants for products liability-design defect, products liability-failure to warn and also loss of consortium. Relator's Exhibit D. As a part of those claims, Plaintiffs made claims for punitive damages. Relator's Exhibit D at ¶¶ 50 and 56.

13. Decedent worked for Relator from 1962 until 1995. Relator's Exh. O at p. 141.

14. Plaintiffs seek in their discovery information concerning asbestos products and the uses of such products at Ford's Claycomo facility to ascertain, among other things, the identities of John Doe Defendants.

15. John Doe Defendants are described in the Petition as:

These John Doe Defendants, or their predecessors in interest, at all times relevant hereto engaged in the design, manufacture, production, sale, distribution, installation, use or disturbance of asbestos, asbestos-containing products and/or were supervisors, superiors or co-workers of decedent at Ford Motor Company. When their names and addresses are discovered, plaintiffs will

amend this Petition to specifically name these persons and/or entities as Defendants.”

Relator’s Exh. O at ¶ 6, p. 142.

16. The discovery at issue includes the uniform asbestos interrogatories and requests for production of documents that have been used in Jackson County asbestos cases since the 1980's. Exh. D.

17. In 1985, the Sixteenth Judicial Circuit Court, having considered similar discovery issues for over 10 years, did what many courts around the country were doing -- it adopted a standing order called the Order Coordinating Pre-Trial Proceedings (“Standing Order”), for its asbestos litigation. Exh. J.

A. The Standing Order established an entirely separate action, In Re: Asbestos-Related Litigation, Case No. CV83-3682 (hereafter “In Re: Asbestos”) which could and would be used to coordinate and streamline pretrial proceedings.

B. The Standing Order further established pleading requirements, set a timetable for pretrial proceedings and published uniform sets of interrogatories and requests for production of documents to be answered by all parties one time and thereafter to be seasonably updated only. Id.

C. The discovery and other features of the Standing Order were the subject of hearings and substantive negotiations between attorneys representing both defendants and plaintiffs. These proceedings were not lightly undertaken.

Each side selected and designated well-respected and experienced attorneys to represent their interests in the negotiating sessions. Those sessions produced the outline of a proposed order and the approved discovery. Multiple sessions were undertaken and consultation with other experienced and interested counsel occurred in the interim period. Ultimately, a final hearing was conducted, counsel were heard again, the requests in the uniform discovery were reviewed and considered, and the Standing Order was entered by then Presiding Judge, the Hon. William F. Mauer. Exh. T.

D. The uniform interrogatories to defendants which were approved and adopted for asbestos cases ask for basic, relevant information concerning the identity of the defendant; defendant's awareness of the hazards of asbestos fibers; defendant's use of asbestos and its manufacture of asbestos products; defendant's research into the hazards of asbestos in the defendant's products; defendant's sales of asbestos products in Missouri and Kansas; defendant's dissemination of warnings and disclosure of the history of claims of asbestos disease made against defendant.

E. Because the information is so basic and relevant to virtually every asbestos case, the court intended that defendants would answer the discovery one time and file their responses in the In Re: Asbestos file which would be maintained by the Presiding Judge. With the defendants' answers on file, plaintiffs would not be required to serve the same discovery in each separate

matter. Likewise, the defendants would not be required to re-answer the same discovery in each matter. The Uniform Discovery, as one-time discovery, was deliberately designed to be broad enough to streamline Jackson County asbestos litigation. Plaintiffs, the courts and other parties could have a resource available which would advance each case without repetitious discovery. Only when circumstances dictated that the answers must be amended would the defendants need to file new discovery responses.

F. This Standing Order has saved courts and parties in these cases a tremendous amount of time. No longer do asbestos litigants have to analyze each interrogatory and request for production in every case as to every defendant and re-play the discovery and motion practice in every case.¹

G. The Standing Order, as approved, contained certain requirements to which Plaintiffs' representatives originally objected. Therefore, the Order was appealed, ultimately to this Court. After briefing and argument, it was approved by the Missouri Supreme Court *en banc* on December 16, 1986. State ex rel. Williams v. Mauer, 722 S.W.2d 296 (Mo.*banc* 1986).

H. The interrogatories, which are subject to the Relators' Petition, were not then appealed by any defendant.

I. Thereafter, asbestos bodily injury litigation proceeded for several

¹ Asbestos bodily injury actions typically have numerous party defendants.

years under this Order. Numerous asbestos defendants answered the same uniform discovery about which this Relator now complains to this Court.

J. In 1990, an amendment of the original 1985 Order was entered by Judge Gene Martin, the then Presiding Judge of the Sixteenth Judicial Circuit (hereafter “Amended Order”). Exh. U. Corresponding uniform discovery was again assembled after extensive discussions and negotiations between plaintiffs’ counsel and designated, representative counsel for numerous asbestos defendants. Many of the best attorneys in Kansas City were involved in the drafting of the aforementioned. As a result, specific interrogatories and requests for production of documents were crafted and made part of the Court’s Amended Order. Exh. U at pp.189-233.

K. In 1994, asbestos manufacturer/defendant A.P. Green Industries filed objections to several of these Uniform interrogatories, particularly, the product identification interrogatory here at issue, number 5 (the only interrogatory specifically discussed herein by Relator). Fred Nations, et al. v. A.P. Green Industries, Inc., et al, Circuit Court of Jackson County, Missouri, Case No. CV92-23905. A.P. Green claimed that it should not be bound by the Amended Order because it was not an original negotiating party to the Amended Order and therefore, it should not be required to answer interrogatory 5 of the uniform interrogatories to defendant. A.P. Green argued that the discovery was unduly burdensome and irrelevant in that it required disclosure of products to

which plaintiffs had not previously claimed exposure. Citing to the Amended Order, and mindful that the uniform discovery is intended to be used by all current and future plaintiffs, the trial court, through Judge John I. Moran overruled A.P. Green's objections and ordered that the Uniform Interrogatories be answered and documents produced. Exh. V. A.P. Green then filed a Petition for Writ of Prohibition and pursued the motion through the Court of Appeals, even seeking transfer to the Missouri Supreme Court. The Petition for Writ was denied the day after oral argument to the Court of Appeals and A.P. Green was ordered to answer the uniform discovery at issue in this Petition. State of Missouri, ex rel. A.P. Green Industries, Inc. v. The Honorable John I. Moran, Missouri Court of Appeals, Western District, Case No. WD 49701 (order quashing writ attached as Exh. W; order denying transfer to the Supreme Court attached as Exh. X).

L. In 2000, certain defendants, also represented by counsel for this Relator, challenged an order overruling objections to this discovery. Cogley v. W.R. Grace & Co.-Conn., et al., Circuit Court of Jackson County, Case No. CV98-5262 and also State ex rel. Minnesota Mining & Manufacturing Co. v. The Hon. John I. Moran, Case No. SC82259. Exh. Y-BB. The Hon. Jack Gant, acting under appointment of Judge John Moran, as a discovery master in the Cogley case, signed a Report of Master stating:

I have also thoroughly examined the prior and

present standing orders of the Circuit Court in regard to pre-trial proceedings in asbestos-containing products.

After a review of all the aforesaid, the Master finds that the Standing Order of the Circuit Court now in effect, has served both the Court and the litigants well for a number of years. The order was originally agreed upon by the attorneys for both plaintiffs and defendants as well as the Court to expedite and unify the discovery process in these cases.

The Master further finds that the compliance with this rule has not invoked an undue hardship on the litigants. The order has standardized and unified discovery for all cases pending in the various divisions of the Court, and in the Master's opinion, has been in the best interest of the litigants and the Court dockets.

Thus the Master respectfully submits this Report and recommends that the Court approve the continued use of the Standing Order of the Court without modification or change.

Exh. X (emphasis added).

M. Judge Moran adopted that Report and Ordered the asbestos

defendants in the Cogley case to fully answer the uniform discovery. Exh. Z. That Order led to Petitions for Writ of Prohibition in State ex rel. Minnesota Mining & Manufacturing Co. v. The Hon. John I. Moran in the Court of Appeals, Case No. WD 57826 and in this Supreme Court, Case No. SC82259. The Court of Appeals denied the writ. After a full briefing and argument to the court, the Supreme Court also denied the writ of prohibition.² Exh. AA and BB respectively. Exh. D, Affidavit of Steven E. Crick.

18. Relator initially refused to answer the Jackson County Uniform set of discovery claiming that the lawsuit only concerned workers' compensation issues. Relator's Exh. P-1.

19. In response to uniform interrogatory 5 which asked Relator to identify all asbestos products it has manufactured, Relator identified only brakes and clutches. Relator's Exh. P-2 at pp. 111-114.

20. Plaintiffs recently obtained an April 1977 document prepared by Relator called

² It should be noted that after the Supreme Court denied the writ petition, counsel for Plaintiff in Cogley, the same counsel as here, contacted counsel for Relator in Cogley, the same counsel as for Relator in this action, and inquired when and how the defendant would be supplementing discovery. Counsel indicated that he was "not aware of any additional responsive documents or information for the uniform interrogatories." Exh. CC. The writ petitions had been filed simply to preserve objections. This resulted in a motion for sanctions. The Cogley case was settled before the sanctions hearing was held.

“ASBESTOS. Supplier Compliance with OSHA Regulations.” Exh. K. This document lists products used by Relator that contain asbestos. The document shows a stamp “PRODUCED BY FORD” and a Bates stamp number 004501. The document identifies asbestos-containing products used by Ford by Ford’s “Component Part Numbers,” “Component Name,” and the “Vendor.”

21. Plaintiffs recently obtained an April 1977 document prepared by Relator’s Vehicle Materials Engineering Department called “Company Asbestos Components (For Supplier Survey).” Exh. L. This document lists vehicle components containing asbestos. Of particular note, decedent was an automobile painter at Relator’s Claycomo plant. This document lists among its products “Mastic Sound Deadener-Spray on,” a product believed to have been applied by or near shop painters such as decedent.

22. On August 23, 1972, Relator’s Manager of Materials Engineering Department wrote an Inter Office Communication concerning “Potential Future Status of Asbestos-Containing Materials.” Exh. M. This communication identified types and manufacturers of asbestos-containing products used by Relator and identified them by a specification number. Id.

23. On January 11, 1973, Relator’s Manager of Materials Engineering Department wrote an Inter Office Communication concerning “Asbestos-Containing Materials - Status Report this Date.” Exh. N. The communication identified specific manufacturers of asbestos-containing products used by Relator at its plants, and was based on replies Relator had received to inquiries made of its suppliers about the presence of asbestos in their products.

24. Relator has not produced the manufacturers' replies or the request. Nor has Relator produced documents concerning the purchase and use of such products at Claycomo which may identify potential John Doe defendants. Exh. D, Affidavit of Steven E. Crick.

25. Relator has not produced the inquiries Relator made to its suppliers or the replies that they provided to Relator. Nor has Relator produced documents concerning the purchase and use of such products at the Claycomo facility where Decedent worked that may identify potential John Doe Defendants. Exh. D, Affidavit of Steven E. Crick.

26. Relator did not list all of the products shown on Exhibits K, L, or M in its answer to uniform Interrogatory 5 which asks Relator to identify asbestos products which it designed, manufactured or sold and, in fact, now claims that this interrogatory is too burdensome.

27. On June 11, 1980, Defendant Scott, the Industrial Relations Manager for Relator, wrote a memo to D.B. Epley regarding "Asbestos Nonproduction Materials Utilization Survey." Exh. O. The memo identified specific products used at the plant at which Decedent worked that contained asbestos as of that date.

28. Attached as Exh. OO is a recently obtained April 15, 1980 Inter Office Memo, entitled: "Identification of Production Materials and Components Containing Asbestos," which contains a nine page list of asbestos-containing products used in Ford vehicles such as gaskets, seal assemblies, switch assemblies, hub assembly, air brake compressor, muffler assembly, cigar lighter and engine assemblies.

29. On February 25, 1980, Defendant Scott, the Industrial Relations Manager for

Relator, wrote an Inter Office Communication concerning “Asbestos Evaluation-Kansas City Assembly Plant.” The communication states: “The Kansas City Assembly Plant has potential employee exposures to asbestos throughout the entire plant at locations where asbestos insulated pipes are presently installed.” Exh. P.

30. In December 1985, an asbestos survey of the Claycomo plant where Decedent worked was conducted for Ford. The survey reported finding amosite asbestos and chrysotile asbestos in pipe, boiler, elbow and tank insulation and in ovens. Asbestos products were found in many areas of the plant, including the Paint and Oil Mix Building and in various paint booth and oven areas. The survey advised Ford that certain asbestos-containing materials, including materials in the Paint and Oil Mix Building, were in poor condition and should be removed on a priority basis. Exh. Q.

31. Decedent Roy Dietiker testified in a deposition attended by Ford that he was exposed to asbestos at the Claycomo plant, including exposure in the Paint and Oil Mix Building. Exh. R at p. 137-138, Deposition of Roy Dietiker at pp. 27-43.

32. Plaintiffs allege that Relator failed to give decedent a warning about the hazards of asbestos even though he was present at Relator’s work facility and could have easily received a warning. Relator’s Exh. D at ¶ 28, p. A026.

33. In December 2003, the trial court denied Ford’s Motion to Dismiss products liability claims made in this civil case which concerned decedent’s exposure to asbestos when using Ford brakes on his personal vehicles at his home. The Court found that these were not workers’ compensation type claims. Relator’s Exh. R. Relator did not seek a Writ or other

relief in response to that ruling.

34. Uniform Request for Production, paragraph 6, asks for records concerning workers' compensation claims filed against the Relator for asbestos-related injury. Relator's Exh. P-5.

35. Relator claims in its Petition for Writ of Prohibition that it is not able to quickly search its files for such workers' compensation claims stating "Responding to Request No. 6 alone would require thousands of hours and no less than \$2,753,600.00." Relator's Exhibit U at p. 342. Relator stated further that its workers' compensation files are not indexed by disease or injury type , but rather are merely organized by employee name or employee number. The files are also not indexed by job description or category, but rather are merely organized by employee name or employee number. There is no computerized database of all workers' compensation claim information that would allow retrieval of all the information sought. As such, any search of the files must be conducted manually reviewing each workers' compensation file one by one.

Id. at p. 343.

36. However, in a 1990 Florida case, Constance Stables v. General Motors Corporation, et al., St. Lucie County, Florida, Relator answered discovery on this issue, as follows:

3. Has Ford been a party to any Workers Compensation Claim made by a worker alleging asbestosis, lung cancer or mesothelioma?

ANSWER: However, commencing in 1988, workers' compensation

records have been maintained on a computer data base. A word search was done for the terms asbestosis, lung cancer and mesothelioma. That search came up with 114 references to asbestosis, 23 references to lung cancer and no references to mesothelioma. Ford will make workers' compensation files that have these references available for inspection.

Exhibit DD at pp. 249-251.

37. Three days after the filing of Relator's Petition for Writ of Prohibition with the Court of Appeals, Relator served Plaintiffs with substantial substantive supplemental answers to these uniform interrogatories and requests for production. Exh. F, Relator Ford Motor Company's Supplemental Responses to Plaintiffs' First Uniform Interrogatories to All Defendants.³ Relator produced 10 boxes of Ford documents responsive to Plaintiffs' requests for production with the answers. Exh. NN. These 10 boxes included the following documents:

A. Relator produced an August 28, 1980 document concerning a UAW request for information on which Ford employees were being covered by Ford's asbestos medical surveillance program which states "the Company assured the union that there was a record of such exposed employees [sic] and that these employees [sic] have been

³The mailing certificate shows service in Oct. 2003. Exh. F. However, the answers were served on September 27, 2004 as shown on the fax transmittal at the top of each page. Id.

receiving annual medical examinations on an on-going basis.” Exh. EE.

B. Relator produced an October 24, 1980 document that states that when the UAW negotiator again pressed Ford for information on which employees had been or were exposed to asbestos, he was provided “with a list of employees presently on the Company’s medical surveillance program.” Exh. FF.

C. Relator produced a May 20, 1980 Inter Office Communication from R.E. Fulmer, Supervisor for Relator concerning T.J. Zeremba vs. Ford Motor Company. This was an asbestos-related workers’ compensation claim. Exh. GG.

D. Relator produced a 1984 workmen’s compensation claim by former Ford employee William Kent Miller. Mr. Miller’s claim, filed in the State of California, alleged injury to his lungs, cardiovascular and respiratory system due to “exposure to asbestos.” Exh. HH.

E. Relator produced a Michigan Bureau of Workmen’s Compensation claim by Ford employee Joseph E. Grace. Filed on November 5, 1984, Mr. Grace alleged injury from “prolonged exposure to asbestos resulting in asbestosis and chronic bronchitis, said conditions having become acute and requiring surgical removal of the right upper lobe of petitioner’s lung.” Exh. II.

F. Relator previously produced a September 5, 1984 memorandum from its Personnel and Organizational Staff titled "Mesothelioma Deaths." The memorandum reveals the existence of a "Mortality File" kept by Ford and Ford's knowledge of 38 mesothelioma deaths among its employees as of June 1984. The list included the employees' name, Social Security Number, primary job at Ford, primary plant location and whether the diagnosis was confirmed by autopsy. One of the workers listed, V. Harris, worked in the same department as Plaintiffs' decedent Roy Dietiker at the Kansas City Assembly Plant.

Exh. JJ.

Exh. D, Affidavit of Steven E. Crick.

38. Plaintiffs are now aware that Relator is able to use its computer systems to access much, if not most or all of the information sought in these discovery requests. George Sarkisian, former employee of Relator in its research and engineering center in Dearborn, Michigan affirms that Relator possesses extensive computers designed to track the type of information sought in this discovery. Sarkisian states:

Ford designs its vehicles. This includes specifying what parts are to be used on those vehicles. Those parts are given a part number. Ford is able to track the parts used in its vehicles. Ford is able to track the manufacturer of parts for its vehicles. Ford further keeps information on its system concerning its suppliers and is able to ascertain what parts were supplied for Ford vehicles

by such suppliers.

Every vehicle built has a bill of material or menu/recipe of parts or whatever description one wants to use.

I have reviewed the document called ASBESTOS, Supplier Compliance with OSHA Regulations, Exh. K herein. This Ford document also identifies parts containing asbestos identifying the part by Ford's Component Part Number, the Component Name and the vendor. This is information kept on Ford's computer system. It is my opinion that Ford is able to ascertain which vehicles used these parts and the years of such use.

Based upon my work at Ford, it is my opinion that Ford is able to provide specific information concerning its use of asbestos in Ford vehicles through word searches on its computer system.

Exh. QQ.

39. In support of PLAINTIFFS' THIRD MOTION TO ENFORCE AS TO FORD MOTOR COMPANY, filed on December 30, 2003, which resulted in at-issue Order, Relators Exh. B-1, Plaintiffs stated:

The discovery at issue is follow-up based upon documents obtained from Ford and elsewhere. The issues are specifically limited and concern asbestos exposures that Roy Dietiker had or may have had at Ford's Claycomo plant. **The interrogatories can lead to the discovery of additional defendants** and can lead to evidence pertaining to Ford's knowledge of asbestos health hazards,

specifically hazards at lower levels as well as to Ford's specific ability to give a direct warning to Roy Dietiker about asbestos and his health. Exh. KK.
(emphasis added)

40. In support of PLAINTIFFS' MOTION TO ENFORCE AS TO FORD MOTOR COMPANY, filed on Nov. 12, 2003, Plaintiffs argued "Request 4 concerns oven burners. The same comments about time apply here. Further, Plaintiffs understand that some of the ovens may have been removed. The records may be the only evidence that exists concerning this source of exposure. **This could also identify additional defendants.**" Exh. LL, 4-B at page 366. (*emphasis added*).

41. At the June 4, 2004 argument to the Respondent on these discovery requests, counsel for Plaintiffs specifically raised the issue of John Doe Defendants and conversed after the hearing with counsel for Relator on that specific topic. Counsel for Plaintiffs has had numerous conversations with counsel for Relator concerning Relator's production of evidence that may lead to the naming of additional defendants, even conversations during these writ proceedings. Exh. D.

42. Attached as Exh. MM is a copy of Ford Motor Company's December 2000 Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents in the matter Taylor, et al. v. Abex Corp., et al., Case No. CV-404331, Court of Common Pleas, Cuyahoga County, Ohio.

43. Attached as Exh. PP is a copy of Ford Motor Company's Answers to Plaintiffs' First Special Set of Interrogatories to Defendants Ford Motor Company,

DaimlerChrysler Corporation and General Motors Corporation served in the matter Johnson v. DaimlerChrysler Corp., et al., Case No. 04CV219314, Cir. Ct. Jackson County, Missouri.

44. Plaintiffs filed a separate civil action in federal court, Dietiker v. United States Gypsum Co., et al., Case No. 4-01-00587-FJG (W.D. Mo. 2001). Plaintiff claimed that the United State Gypsum product was used in their home and that the Federal-Mogul, TAF and T&N products were used when Roy Dietiker worked for another employer at the BMA Building in Kansas City, Missouri in the early 1960's. Exh. RR. ACandS was also linked to the BMA Building. Plaintiffs asked Relator if ACandS also supplied products to the Claycomo plant. Relator was represented at Roy Dietiker's deposition when he testified to these exposures. Exh. R.

45. Subpoenas were served upon Ford in the federal action. Relator produced a limited amount of documents, general in nature, and consisting of things such as the surveys for asbestos at the plant. Exh. SS. These documents, while they did offer evidence of potential asbestos exposures at Ford's Claycomo plant, did not fully identify the suppliers of asbestos to the Claycomo facility or those who may have negligently disturbed those products. Unfortunately, Relator improperly limited its production and Plaintiffs were forced to file a motion to compel. Exh. J to Relator's Appendix.

46. Each defendant named in that federal action has filed for bankruptcy. Plaintiffs have thus elected not to pursue John Doe-related discovery in that action since there are no active defendant parties. Exh. D, Affidavit of Steven E. Crick.

47. Plaintiff Priscilla Dietiker has also filed a separate workers compensation claim

and is pursuing discovery to prove that decedent's death was not an accident, as defined under Missouri Workers Compensation laws. Exh. D, Affidavit of Steven E. Crick.

48. Plaintiffs are cognizant of the exposure to asbestos that decedent suffered when working on his own vehicles. This led to the filing of this action against Relator as well as co-worker F.X. Scott and the John Doe Defendants. Exh. D

49. Relator moved to dismiss the state court case. The trial court dismissed "Count I, Negligence", for failure to state a claim. The trial court stayed Counts IV and V. The Court overruled the motion as concerning all other counts. The order did not stay the action as against any John Doe Defendant. Nor did the action stay discovery on issues which were pertinent to the non-stayed claims in Counts II and III. The discovery at-issue is pertinent as to all active claims. Exh. R to Relator's Appendix.

50. The Hon. William Kramer conducted a hearing primarily on the issue of the motion to dismiss. Limited argument took place concerning the discovery here at issue. Subsequently, the case was transferred to Respondent, the Hon. W. Stephen Nixon, who conducted a full hearing concerning discovery. Exh. D, Affidavit of Steven E. Crick.

POINTS RELIED ON

I. Relator is Not Entitled to an Order Prohibiting Respondent from Compelling the Discovery At Issue Because Respondent Has Jurisdiction to Compel Relevant Discovery and All of the Discovery At Issue Relates to the Surviving Product Liability Claims in Counts II, III and VI Against Relator and/or the Claims Against John Doe Defendants.

1. State ex rel. County of Jackson v. Missouri Public Service Comm'n, 985 S.W.2d 400 (Mo.App. W.D. 1999).
2. County Court of Washington County v. Murphy, 658 S.W.2d 14 (Mo. *banc* 1983).
3. State ex rel. Dixon Oaks Health Center, Inc. v. Long, 929 S.W.2d 226 (Mo.App. S.D. 1996).
4. State ex rel. Williams v. Mauer, 722 S.W.2d 296 (Mo. *banc* 1986).

II. Relator is Not Entitled to an Order Prohibiting Respondent from Compelling the Discovery At Issue Because Respondent Properly Exercised its Discretion.

1. State ex rel. Plank v. Koehr, 831 S.W.2d 926 (Mo. *banc* 1992).
2. State ex rel. Kawasaki Motors Corp., U.S.A. v. Ryan, 777 S.W.2d 247 (Mo. App. E.D. 1989).

ARGUMENT

I. RESPONSE TO RELATOR'S FIRST POINT

RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM COMPELLING THE DISCOVERY AT ISSUE BECAUSE RESPONDENT HAS JURISDICTION TO COMPEL RELEVANT DISCOVERY AND ALL OF THE

DISCOVERY AT ISSUE RELATES TO THE SURVIVING PRODUCT LIABILITY CLAIMS, COUNTS II, III AND VI, AGAINST RELATOR AND/OR THE CLAIMS AGAINST JOHN DOE DEFENDANTS

A writ in prohibition is appropriate only where there is a clear excess of jurisdiction. State ex rel. Williams v. Mauer, 722 S.W.2d 296 (Mo. *banc* 1986). In order for the court to entertain and enter a writ of prohibition there must be a specific controversy. See State ex rel. County of Jackson v. Missouri Public Service Commission, 985 S.W.2d 400, 403 (Mo. App. W.D. 1999) (there must be a justiciable issue before the Court in a petition for writ of prohibition); County Court of Washington County v. Murphy, 658 S.W.2d 14, 16 (Mo. *banc* 1983)(to seek a writ of prohibition, there must be a justiciable issue between the parties or there is no jurisdiction). In this instance, no justiciable issue has been presented and thus no writ should enter.

A. Respondent DOES have Subject Matter Jurisdiction to Order the Discovery at Issue. The Labor and Industrial Relations Commission Does Not Have Exclusive Jurisdiction To Compel The Discovery At Issue.

Relator attempts to confuse this Supreme Court, just as it attempted to confuse the Respondent trial court and the Court of Appeals, by ignoring the fact that there is more than one claim pending and by ignoring the fact that the discovery sought is relevant to those claims not stayed. Plaintiffs have brought products liability claims against Relator and the John Doe Defendants. Those claims are active and the discovery at-issue pertains to those claims.

Relator, however, argues that there is no possible way that any information that Relator possesses concerning asbestos at the Claycomo facility can be discoverable, simply because such discovery is ONLY relevant to a workers compensation claim. Relator's argument is wrong. It was recognized by Respondent and the Court of Appeals as wrong and should be rejected by this Court.

Relator attempts to confuse this Court by not addressing the products liability claims and, thus, falsely characterizing "examples" of discovery as being related only to workers' compensation issues. It must be noted that evidence which is not admissible on one issue but is admissible on another issue is still admissible. Thompson v. City of Lamar, 17 S.W.2d 960, 975 (Mo. 1929) (stating general rule that if evidence is "properly admissible for one purpose it cannot be excluded upon the ground that it may not be properly admissible for another purpose"). Such evidence is likewise discoverable.

Relator refuses to explain why any but the two specific interrogatories it referenced are only related to a workers' compensation claim. It simply refers to its Exhibit Q which turns out to be nearly every interrogatory and request for production served in the case. Relator never argues why any specific interrogatory or request should be denied because of this objection. Accordingly, the petition should be denied on the basis that it lacks the requisite specificity.

B. Respondent Has Jurisdiction To Enforce Uniform Asbestos Discovery

Discovery is permissible if it is likely to lead to the discovery of admissible evidence. V.A.M.R. 56.01(b)(1); State ex rel. Dixon Oaks Health Center, Inc. v. Logan, 929 S.W.2d 226,

231 (Mo.App. S.D. 1996)(noting that the term “relevant to subject matter involved” is broadly defined to include material reasonably calculated to lead to the discovery of admissible evidence). Two of the at-issue sets of discovery are “uniform” sets that have been used in Jackson County, Missouri asbestos cases for nearly twenty years. Exh. V. See also, Relator’s Exhibit P-1. These sets of discovery have already withstood challenges to the Supreme Court (interestingly, by two defendants also represented by this same counsel). This discovery addresses the central pervasive issues in all asbestos cases: 1) Relator’s use and/or supply of asbestos containing materials in the ordinary course of its business; 2) The hazards of asbestos, asbestos containing materials and exposures to the same; 3) Relator’s knowledge, actual or constructive, of such hazards; 4) The ability of asbestos in its various forms to cause the disease suffered by decedent; 5) The need for and content of adequate warnings concerning asbestos and asbestos containing materials; and 6) Relator’s willful conduct in a variety of settings.

A defendant’s experience with asbestos-containing products is discoverable in general because it is the asbestos fiber which causes disease, and the manufacture or sale of one asbestos-containing product or product type tends to spawn knowledge and experience about asbestos generally. This in turn leads to actual or constructive knowledge about the health effects of other/or all asbestos-containing products. This knowledge is frequently discovered and understood in proper context in the discovery process only after the list of defendant’s own asbestos products is disclosed. Such knowledge includes knowledge of the hazards of asbestos, testing of asbestos products, knowledge about safety precautions for asbestos,

knowledge of asbestos emissions or the “releasability” of asbestos fiber, and knowledge about asbestos substitutes and fiber research.

A company’s knowledge from its experience with different types of asbestos-containing products in its own product lines is also illuminating as to the need for warnings concerning the various uses and types of exposures to asbestos, the placement of warnings on packages and/or on paper, the content of warnings and the effectiveness of warnings. Defendant’s own experience with asbestos illustrates the need for special precautions to avoid exposure to generically described “asbestos-containing dust” or “dust.” All of this knowledge comes from the baseline information concerning a company’s manufacture and supply of asbestos-containing materials without limitation to a particular product or product type.

Relator has answered virtually the same discovery in many other jurisdictions in the United States as is at issue here. Exh. DD, MM. Relator does not explain why it was able to answer the discovery in those cases, yet it is too burdensome to provide those same answers here.

Relator cites Uniform Interrogatory 5 as one of the only two discovery requests about which it makes any specific argument or objection. This interrogatory asks the defendant to identify the asbestos products that it manufactured. Relator chose to limit its answer to brakes and clutches and claims that any additional answer is too burdensome. Defendant has a list identifying numerous sources of its asbestos products. Exh. OO. That document, an April 15, 1980 Inter Office Memo entitled: “Identification of Production Materials and Components Containing Asbestos,” contains a nine page list of asbestos-containing products used in Ford

vehicles such as gaskets, seal assemblies, switch assemblies, hub assembly, air brake compressor, muffler assembly, cigar lighters and engine assemblies. There is no burden to giving a full answer to Interrogatory 5. Relator simply chooses to prevent Plaintiff from discovering other asbestos products to which decedent may have been exposed.

It must be noted that by the date of the aforesaid 1980 memo, Relator was aware of the need to take precautions around asbestos. This memo was an attempt to discover which products required such protection. As such, a refusal to give a full answer to Uniform Interrogatory number five is an improper attempt to limit Plaintiffs' investigation of Relator's knowledge of asbestos and asbestos hazards.

Likewise, the existence of workers compensation claims against Relator is discoverable. See Uniform Document Request No. 6. That Relator has defended claims of asbestos disease from its own workers is discoverable on many issues. Claims brought before decedent personally used the products at issue in his own vehicles are evidence of Relator's negligence in failing to give an adequate warning. Such claims, brought before and/or after decedent's exposure, may demonstrate that the fiber in the brakes caused disease to Relator's employees—a claim Relator denies. This is a standard request. Relator does not necessarily argue that this is not discoverable as Relator has produced some of the requested information. Rather, Relator argues that such production is just too burdensome. That argument is addressed below.

C. Uniform Asbestos Discovery Has Been Repeatedly Validated

The uniform interrogatories and requests for production (Relator's Exh. U, Relator's

Exh. P-1 to P-7) are mandated discovery materials in the Jackson County, Missouri circuit courts. The sets of Uniform Discovery have been challenged about once every five years or so in the Missouri Court of Appeals and/or in the Missouri Supreme Court. Each time, the challenge was lost. Most recently, defendants challenged an order overruling objections to this Uniform Interrogatory number five. Cogley v. W.R. Grace & Co., Case No. CV98-5262 (Exh. V-X) and also State ex rel. Minnesota Mining & Mfg. Co. v. Moran, Case No. SC82259 (Exh. Y-BB). In Cogley, the Hon. Jack Gant, acting under appointment of Judge John Moran, as a discovery master, signed a Report of Master stating:

I have also thoroughly examined the prior and present standing orders of the Circuit Court in regard to pre-trial proceedings in asbestos-containing products. After a review of all the aforesaid, the Master finds that the Standing Order of the Circuit Court now in effect, has served both the Court and the litigants well for a number of years. The order was originally agreed upon by the attorneys for both plaintiffs and defendants as well as the Court to expedite and unify the discovery process in these cases.

The Master further finds that the compliance with this rule has not invoked an undue hardship on the litigants. The order has standardized and unified discovery for all cases pending in the various divisions of the Court, and in the Master's opinion, has been in the best interest of the litigants and the Court dockets.

Thus the Master respectfully submits this Report and recommends that the Court approve the continued use of the Standing Order of the Court without

modification or change.

Exh. Y (*emphasis added*) at pp. 232-233. Judge Moran adopted that Report and Ordered the asbestos defendants in the Cogley case to fully answer the uniform discovery. Exh. Z. That Order led to petitions for writs of prohibition in State ex rel. Minnesota Mining & Manufacturing Co. v. The Hon. John I. Moran in the Court of Appeals, Case No. WD 57826 and in this Supreme Court, Case No. SC82259. The Court of Appeals denied the writ. After full briefing and oral argument, the Supreme Court *en banc* denied the writ. Exh. AA and BB respectively.

Several years earlier, A.P. Green challenged an order that it specifically identify all of its asbestos-containing products in response to Uniform Interrogatory number five. It lost too. State ex rel. A.P. Green Indus., Inc. v. Moran, Case No. WD 49701, (Mo.App. W.D. 2/14/93, *request transfer denied* 3/28/95). Exh. W, X. The Courts in Missouri at all levels have repeatedly and consistently upheld the very discovery that Relator and its counsel now resist. Coincidentally, counsel for Relator, Baker Sterchi, was counsel for the Relators in the Minnesota Mining writ petition. Familiar with both the history of the discovery in the trial and appellate courts, Relator's current challenge is suspect.⁴

⁴ It should be noted that after the Supreme Court denied the writ petition, counsel for Plaintiff in Cogley, the same counsel as here, contacted counsel for Relator in Cogley, the same counsel as for Relator in this action, and inquired when and how the defendant would be supplementing discovery. Counsel indicated that he was "not aware of any

D. Respondent Has Jurisdiction To Enforce Non-Uniform Asbestos Discovery

The other discovery at-issue (i.e., the non-“uniform” asbestos discovery) is tailored as a specific follow-up discovery concerning Relator and its knowledge about asbestos. Relator’s Exh. P-8 and P-9. In the course of investigating Relator and its general knowledge of asbestos, it is important to inquire about specific issues pertinent to this case. Decedent not only used asbestos products manufactured by Relator, Decedent worked for Relator at the Claycomo assembly plant in Kansas City, Missouri for over 30 years. He was exposed to asbestos at Claycomo from products and sources known only to Relator. Relator, therefore, is not only a defendant but also a fact witness on decedent’s exposure to products supplied by others to decedent’s place of work. Indeed, Relator may be the only source of information which can identify the John Doe Defendants. The discovery is tailored to locate evidence concerning those John Doe Defendants and assists in answering such general questions as: Whose asbestos products were used at Claycomo? What products were they? How were they used? Where were they used? Were they used where Decedent could have been exposed? Did a third party contractor disturb asbestos causing Decedent to be exposed?

additional responsive documents or information for the uniform interrogatories.” Exh. CC. The writ petitions had been filed simply to preserve objections. In the meantime, while the case was in the high courts on a writ, Mr. Cogley died. The delay and abuse in that case are nevertheless revisited here again by the same defense counsel, representing yet another different defendant.

Decedent worked at the Claycomo facility every day. Why did Relator fail to give a direct warning to Decedent that the employee-discounted asbestos products he was buying were hazardous? Relator could and should have given Decedent a direct oral warning, but gave none. The additional discovery addresses these issues.

1. The Discovery is Necessary to Identify John Doe Defendants 1-20 and to Discover the Nature and Extent of Decedent's Exposure to Products of These John Doe Defendants.

Relator argues that, in defeat of Relator's writ petition at the Court of Appeals, Plaintiffs for the first time claimed that the discovery was pertinent to the issue of the John Doe Defendants. Relator also argues now, for the first time, that Plaintiff already possesses all of this information. It is unclear why Relator made these arguments. The Petition for Damages includes John Doe Defendants 1-20. Relator's Exh. O at pp. A140 and A142. The Petition defines John Does as:

6. These John Doe Defendants, or their predecessors in interest, at all times relevant hereto engaged in the design, manufacture, production, sale, distribution, installation, use or disturbance of asbestos, asbestos-containing products and/or were supervisors, superiors or co-workers of decedent at Ford Motor Company. When their names and addresses are discovered, plaintiffs will amend this Petition to specifically name these persons and/or entities as Defendants."

Relator's Exh. D at ¶ 6, page A142.

Moreover, in their initial answers to interrogatories, Plaintiffs identified sources of asbestos exposures at issue in this case. Plaintiffs stated:

With regard to claims made in this action as against Ford Motor Company, see deposition of Roy Dietiker taken on or about August 2001. Counsel for Ford was present and had an opportunity to ask questions. See also the documents produced by Ford in the Dietiker workers' compensation action and in the Dietiker federal court case including the surveys and reinspections performed by Clayton Environmental. Plaintiffs understand that asbestos was in the plant when Roy Dietiker began his work at the plant and that additional asbestos products were installed when he was an employee of Ford. All such exposures are attributed in this action to Ford Motor Company, F.X. Scott *and John Does*.

Exh. J at pp. 81-82 (emphasis added).

Finally, the issue of John Doe Defendants was specifically raised in briefs concerning the discovery filed with the Respondent. Exh. KK-2 at pp.289-290. At the June 4, 2004 argument to the Respondent on these discovery requests, Plaintiffs' counsel specifically raised the issue of John Doe Defendants and conversed after the hearing with Relator's counsel on that specific topic. Exh. LL. Plaintiffs' counsel has had numerous conversations with counsel for Relator concerning Relator's production of evidence that may lead to the naming of additional defendants, even conversations during these writ proceedings. Exh. D.

Given that Decedent worked at Claycomo for over 30 years, it is likely that Relator possesses substantial information which will identify these potential defendants and explain

how Decedent was exposed to their products. Further, Relator raised an affirmative defense that its brake products were not the cause of Decedent's mesothelioma but rather "such injury or damage was proximately caused or contributed to by exposure to and inhalation of noxious and deleterious fumes and residues from industrial products, by-products and substances other than those manufactured or sold by Ford, if any, and by cumulative exposure to all types of environmental and industrial pollutants or air and water." Exh. E at ¶ 53, pp. 27-28. The source of that exposure would have been at the Claycomo facility. Relator cannot raise that defense and then bar Plaintiffs from investigating that defense in order to rebut it.

Relator argues that Plaintiff already has such information without giving a full explanation of how this is so and without citation to specific documents that give this information. It argues that the initial federal lawsuit named United States Gypsum, Federal-Mogul Corporation, TAF International, Ltd., T&N PLC, ACandS, Incl and John Doe Defendants 1-20. Relator knows better than to claim that these were all known to be suppliers of asbestos to Claycomo. To the contrary, Plaintiffs claimed that the United States Gypsum product was used in their home, and that the Federal-Mogul, TAF and T&N products were used when Roy Dietiker worked for another employer at the BMA Building in Kansas City, Missouri in the early 1960's. Exh. SS. [Even ACandS was linked to the BMA Building although Plaintiff asked Relator if ACandS also supplied products to the Claycomo plant.] Relator was represented at Roy Dietiker's deposition when he testified to these exposures in his home or at BMA. Exh. R. To now argue that these Defendants are the John Does whose asbestos products are at the Claycomo plant is blatant misrepresentation. Plaintiff does NOT know the identity of all John

Doe Defendants. That is why the discovery was served.

2. *The Non-Uniform Discovery May Lead to the Discovery of Admissible Evidence.*

Because Relator objects to no specific discovery save Uniform Interrogatory # 5 and Uniform Request # 6, Respondent believes that the generalized issues raised by Relator as to entire sets of discovery are not properly presented and should be denied. See e.g., Stickley v. Auto Credit, Inc., 53 S.W. 3d 560, 563 (Mo. App. W.D. 2001) (notes propriety of dismissing issues not properly presented). Nevertheless, Respondent offers the following explanation of the validity of the requested special sets of discovery.

a. *Relevance of Plaintiffs' First Special Set of Requests for Production of Documents and for Building Inspection to Defendant Ford Motor Company*

Request 2 asks for x-rays taken of decedent. X-ray reports have been produced but no x-rays. Just as Plaintiffs produced decedent's medical records to allow Relator to investigate decedent's medical history, Plaintiffs wish to investigate that same history through employee medical examinations and x-rays. Defendants in asbestos litigation routinely examine x-rays. Plaintiffs should be allowed to do so as well.

Request 3 concerns remodeling of the Ford plant. This will help identify potential John Doe Defendants and discover how decedent might have been exposed to asbestos from a John Doe product or by a John Doe's negligent actions in disturbing asbestos containing materials.

The request is not limited in time because construction or remodeling before decedent was there may have involved installing asbestos that later became part of his exposure history or contamination of the environment with asbestos dust. Remodeling at the plant after he left may reveal facts about the plant or equipment that is relevant to decedent's exposure by virtue of inspections, tests, or surveys for asbestos content, before demolition as required by law or good practice. For example, subsequent remodeling records may reveal that specific paint shop ovens contained asbestos.

Request 4 concerns oven burners used in the paint area where decedent worked. The same comments about time apply here. Further, some of the ovens may have been removed. The records may be the only evidence that exists concerning this source of exposure. This could also identify additional defendants.

Request 5 asks for plant layouts in specific years. This is necessary to gain an understanding of decedent's exposure. Limiting the production to a specific area only will distort the picture and cause confusion, given that industrial hygiene experts will testify concerning environmental and/or cross-contamination and exposure.

Request 6 asks for plant layouts that show where the asbestos was at in the plant. They inform management of the location of asbestos in the building and help Plaintiffs prove how a particular product in an area could have contributed to an exposure to decedent.

Request 7 asks for documents pertaining to the Relator's "Mesothelioma Deaths" list of Ford employees. Exh. JJ. The memo states that it was compiled from information in "the mortality file." The "mortality file" has not been produced nor has the list of "Mesothelioma

Deaths.” This will prove that Relator was aware that asbestos could and did cause mesothelioma and that asbestos at low levels, lower than when working with brakes on personal vehicles, could and did cause mesothelioma and that the type of asbestos fiber in the brakes could cause mesothelioma. Further, it will help to prove the punitive damages claim against Relator.

Requests 8 and 9 also concern specific documents in Relator’s possession. Exh. M and P. Both documents were written by Defendant Scott to Ford Headquarters stating the need for medical monitoring of Claycomo employees for asbestos disease and for an asbestos survey of the Claycomo plant. Relator’s position on this discovery is unclear. Relator is apparently limiting its search for documents through this Petition for a Writ after stating that no documents exist.

Request 10 concerns budget estimates for medical monitoring of Ford employees. This is a central issue in the case. Did Ford undertake medical monitoring at some plants and not others? Was Claycomo one of these plants? Was Claycomo’s environment hazardous? These facts go to the heart of the case, particularly regarding Ford’s knowledge about the hazard’s of low-level exposures. Moreover, monitoring would have involved a warning to Decedent about asbestos and relates to Plaintiff’s claims and Relator’s affirmative defenses.

Request 13 asks for documents produced in other asbestos cases. Relator’s “national discovery counsel” informed Plaintiffs’ counsel that he oversees discovery in all Relator’s cases. He indicated that he had people looking in its discovery materials for responsive documents. Given the large number of asbestos cases in the U.S., there is no reason to require

each plaintiff to investigate their cases anew. Such a requirement would grossly increase the cost of litigation for each injured person, all so that Relator could make different statements from case to case. (Note Relator's statement in this writ petition that it must perform manual searches of all workers' compensation files (Relator's Exhibit U at p. A343) and compare that with its statement in the case of Constance Stables v. General Motors Corp., (Exh. DD at pp. 250-251) where Relator said in response to discovery that it has a computer program to search for asbestos-related workers' compensation records.) Relator must make a full disclosure.

Requests 14 and 15 concern Relator's membership in the National Safety Council and the Industrial Hygiene Foundation. These organizations generated many documents concerning asbestos health hazards. As a member, Relator received many, if not all of these materials. These materials may demonstrate Relator's awareness of the asbestos hazards that caused decedent's death.

Request 16 asks Relator to allow entry into the plant for inspection. While Plaintiffs' counsel was previously allowed a short inspection, the inspection was incomplete, highly restricted and arranged in such hasty order that Plaintiffs were not able to get a testifying expert to attend. Then, Relator's counsel restricted the photographs taken in the plant to such few areas that the pictures are virtually useless and unrepresentative of the plant where claims for exposure against John Doe Defendants are currently pending.

b. Relevance of Plaintiffs' First Special Set of Interrogatories and Requests for Production of Documents to Defendant Ford Motor Company.

This set of discovery is also follow-up based upon documents obtained from Relator and others. The interrogatories may lead to the discovery of information pertaining to Relator's knowledge of asbestos health hazards, including hazards at levels comparable to or lower than levels found when working with brakes, as well as to Relator's specific ability to give a direct warning to decedent about asbestos and his health. If it has no liability for the exposures, Relator may claim that these exposures caused the decedent's death rather than the exposure to the brakes decedent used. Further, these interrogatories, like the foregoing, may lead to the discovery of additional defendants.

Interrogatories 1 and 2. These interrogatories ask about the uses of asbestos at the Claycomo plant during the years in which decedent was an employee and about the manufacturers of those products. Ford gave no answer save to offer to produce its building surveys and a short document created for Defendant Scott in 1980. Plaintiffs already had these documents: they led to the issuance of this follow-up discovery. Relator offered to supplement the answer at some point in the future regarding the paint booth, paint oven and paint and oil mix room, but gave no specific statement of when it would serve those supplemental answers. Relator's Exh. P-9 at pp. 197-198. However, it now seeks to avoid production through this Petition for a Writ. What asbestos was used in the manufacturing process and when? What asbestos was used in the repair of the facility? Documents previously produced do not describe the uses or the years of such use. This information may lead to the identity of John Doe Defendants.

Interrogatory 3. This asks about the use of asbestos paper at the plant. Plaintiffs have

located Ford purchase records for many rolls of asbestos paper for delivery to Claycomo. How and why was asbestos paper used? This could lead to information regarding exposure and, potentially to the identity of a John Doe defendant.

Interrogatory 4. This concerns periodic medical monitoring of employees for asbestos disease which is relevant and material to the issue of Relator's knowledge of asbestos hazards, particularly from the same fiber used in the brakes at issue and at levels lower than those to which decedent was exposed. Defendant Scott was aware that monitoring was necessary because all employees at Ford were being exposed to asbestos. The level of that exposure was lower than that to which decedent was exposed when using Relator's brake products at decedent's home.

Interrogatory 5. This asks for names of persons who worked with decedent. Relator refused to give any answer because giving a full answer was deemed impossible. Relator cannot refuse to identify fact witnesses known to it.

Interrogatory 6 and 7. These interrogatories ask about chest x-rays of decedent. Ford did produce some medical records concerning decedent including some x-ray reports. Plaintiffs want a medical expert to review these x-rays. Indeed, Plaintiffs signed medical authorizations allowing Relator to obtain all of decedent's medical records from his outside treaters, yet Relator refuses to allow Plaintiffs to see medical x-rays that Relator took. This is basic discovery.

Request 1. This asks for all documents identified or referenced in answers to these interrogatories. Since the answers to interrogatories were insufficient as aforesaid, the

response to the request for production was likewise insufficient.

The Division of Workers' Compensation is not the exclusive forum for discovery of all issues related to companies that employ people. The discovery that Respondent ordered is clearly intended to investigate facts pertinent to the surviving civil claims against Relator and the John Doe Defendants.

II. RESPONSE TO RELATOR'S SECOND POINT

RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM COMPELLING THE DISCOVERY AT ISSUE BECAUSE RESPONDENT PROPERLY EXERCISED ITS DISCRETION.

Relator argues that the discovery is overly broad and burdensome and then primarily discusses discovery that it has now supplemented. This is the same discovery that Relator has answered in numerous asbestos cases across the United States. Clearly, if Relator has answered this type of discovery before, the burden to give a full answer here is minimal.

Relator contends that uniform interrogatory 5 is an interrogatory that is too burdensome to answer. Relator's Exhibit P.1-3. This interrogatory asks Relator to identify the asbestos-containing products that it designed, manufactured or sold. This was the specific uniform interrogatory unsuccessfully challenged by A.P. Green in its 1995 writ petition. Exh. V-X.

Relator offered a supplemental answer which is far from a complete answer and states "Ford manufactured and sold some vehicles that incorporated friction components such as brake linings, brake pads, and clutch facings, which were composed, in part, of asbestos. . .."

Relator's Exh. P-2 at p. 193. Relator listed no other products in this answer, arguing that a more thorough answer would entail too much burden and expense. However, Relator has produced documents that demonstrate that it undertook this burden at least by 1977, again in 1980, and did, in fact, identify products and put that information on a computer. Exh. K, L and O. An April 15, 1980 Inter Office Memo entitled: "Identification of Production Materials and Components Containing Asbestos" contains a nine page list of asbestos-containing products used in Ford vehicles such as gaskets, seal assemblies, switch assemblies, hub assembly, air brake compressor, muffler assembly, cigar lighter and engine assemblies. Exh. OO. It is unclear why Relator did not include these products in its answer. Clearly, if the products could be listed in a document generated 24 years ago, there is no burden to include that same information in a response to Plaintiffs' current request.

Yet even the answer concerning brakes and clutches was incomplete. A more thorough answer could have been provided. On September 16, 2004, Relator answered interrogatories in the case of Robert Johnson, et al. v. DaimlerChrysler Corp., et al., Circuit Court of Jackson County, Missouri, Case No.: 04CV219314. Relator was asked to identify specific vehicles containing specific brake linings. Relator did give what it purported to be a complete answer concerning brakes and clutches. Exh. PP. Relator should have provided this information in response to Interrogatory 5 herein. It is unclear why Relator chooses to give vague answers in this case when it gives more complete answers in another in the same jurisdiction when it has the specific information requested. Relator's answer to Interrogatory 5 is an example of the incomplete answers that led to the motions to enforce, below.

Relator possesses this information on computer systems and is able to provide specific information concerning its use of asbestos in Ford vehicles through word searches on its computer system. Exh. QQ, Affidavit of George Sarkisian.

Relator challenges Request No. 6 concerning workers' compensation claims and argues that it would cost millions of dollars to manually search its workers' compensation files. However, Relator does not advise this court that it swore in another asbestos case that it has many of its workers' compensation records computerized and searchable in that form. Relator swore in its Petition that it is not able to quickly search its files for such workers' compensation claims stating "Responding to Request No. 6 alone would require thousands of hours and no less than \$2,753,600.00." Relator's Exhibit U at p. A 342. Relator stated further that

Ford's workers' compensation files are not indexed by disease or injury type, but rather are merely organized by employee name or employee number; (c) Ford's workers compensation files are not indexed by job description or category, but rather are merely organized by employee name or employee number; and (d) there is no computerized database of all workers' compensation claim information that would allow retrieval of all the information sought.

Id. at p. A 338.

However, in a 1990 Florida case, Constance Stables v. General Motors Corp., Relator answered discovery on this issue as follows:

3. Has Ford been a party to any Workers Compensation Claim made by a worker alleging asbestosis, lung cancer or mesothelioma?

ANSWER: However, commencing in 1988, workers' compensation records have been maintained on a computer data base. A word search was done for the terms asbestosis, lung cancer and mesothelioma. That search came up with 114 references to asbestosis, 23 references to lung cancer and no references to mesothelioma. Ford will make workers' compensation files that have these references available for inspection.

Exhibit DD at pp. 250-251 (Emphasis added).

Relator's position is troubling. First, Relator has not produced those claims which its computer could identify nor has it used the computer to aid its search. Second, Relator did not mention this computer database when it filed its Writ Petition to the Missouri Court of Appeals.

It mentions it now only after Respondent did so in response to the Writ Petition in the Court of Appeals, which Relator lost. Its explanation of the database today is not persuasive and raises a more troubling question: if Relator was being asked to produce workers' compensation claims by 1990 and did create a computer program to track those claims, why has Relator continued to organize its asbestos-related workers' compensation claim files in such a way that enables a "burdensome" argument 15 years later in this case? Relator apparently intentionally files its claims in an unorganized manner in order to claim burden

and thereby avoid their production in these asbestos actions and to allow it to raise an objection of burdensomeness. This is akin to hiding evidence. This conduct should not be rewarded by a Writ allowing Relator to refuse production and to continue recording its claims in this fashion.

Relator objects to disclosing the names of persons that worked with decedent claiming that this, too, is burdensome. Relator's argument of burden carries no weight.

Finally, as to the balance of discovery requests covered by the Respondent's Order instead of offering specific objections and argument to specific discovery, Relator lumps all the discovery together as objectionable because it seeks "work-related claims" or is overly broad and burdensome. As concerns the objections of overly broad and burdensome, these objections violate Sixteenth Judicial Circuit Local Court Rule 32.2.3, which requires that "objections to interrogatories shall be stated with factual specificity and shall concisely set forth the reasons wherein and why the interrogatory is objectionable." Exhibit TT. The Rule further requires that "[s]etting out abstract objections, such as, but not limited to, 'burdensome,' 'over broad,' 'irrelevant,' 'privileged,' 'work product' with no further discussion of wherein and why the interrogatory is objectionable on such grounds is not in compliance with this rule and such objections will not be considered by the Court." Id. Relator has not shown in a credible way why it should not answer the ordered discovery.

III. RELATOR SHOULD HAVE ATTEMPTED TO REDUCE ITS BURDEN BY FILING A MOTION FOR PROTECTIVE ORDER.

The Missouri Rules of Civil Procedure are established to allow both sides of a case to

investigate their claims and defenses. When a party feels that a discovery request is burdensome or seeks objectionable materials, the rules have an outlet for that problem, a motion for a protective order. Rule 56.01. A motion for protective order allows a party to explain to a court what parts of a discovery request are too burdensome or objectionable and why and to seek less restrictive means of discovery. To obtain such relief, however, the party seeking the relief must specify the discovery at issue and state the specific way in which the discovery is burdensome. The court may then set limits on the discovery.

In this instance, had Relator sought a motion for protective order, the Respondent could have heard all facts concerning the supposed “burdens” and fashioned a limitation. However, Relator instead chose an all or nothing approach. Because it believes that it cannot produce all discoverable material, it should not have to produce any. Even though it has in its immediate possession, or, within reasonable access, information which is discoverable, Relator refuses to produce it because Relator believes that it cannot possibly give a full and complete answer. This all or nothing position is wrong and should not be rewarded.

CONCLUSION

Relator has failed to demonstrate that the discovery was ordered without jurisdiction or through an abuse of discretion. Respondent had and has jurisdiction to enter the at-issue Orders. Valid claims are pending against Relator and the at-issue discovery relates to those claims.

We have come a long way since the days of the “sporting theory of justice.” Pre-trial discovery performs important and legitimate functions. The benefits are numerous: liberal

discovery aids in the ascertainment of truth, early disclosure promotes early settlement, surprise is eliminated, issues are narrowed, trial preparation is facilitated and “relevant” information is obtained. State ex rel. Kawasaki Motors Corp., U.S.A. v. Ryan, 777 S.W.2d 247, 251 (Mo. App. E.D. 1989). See also Wilkerson v. Prelutsky, 943 S.W.2d 643, 649 (Mo. banc 1997); State ex rel. Plank v. Koehr, 831 S.W.2d 926, 927 (Mo. banc 1992), State ex rel. State v. Riley, 992 S.W.2d 195, 197 (Mo. banc 1999). Relator’s Petition for Writ of Prohibition must be denied

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CERTIFICATE OF SERVICE

I do hereby certify that on February ___, 2005, a true and correct copy of the foregoing was served via U.S. Mail, postage pre-paid on the following

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